

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PAMELA VALIN; JAMES VALIN,)

Plaintiffs,)

vs.)

NATIONSTAR MORTGAGE, LLC, *et al.*,)

Defendants.)

Case No.: 2:19-cv-01785-GMN-DJA

ORDER

Pending before the Court is the Motion to Dismiss, (ECF No. 10), filed by Defendants Nationstar Mortgage, LLC and U.S. Bank National Association (“Defendants”). Plaintiffs Pamela Valin and James Valin (“Plaintiffs”) filed a Response, (ECF No. 15), and Defendants filed a Reply, (ECF No. 18). Also pending before the Court is Plaintiffs’ Objection/Appeal, (ECF No. 36), concerning Magistrate Judge Daniel J. Albregts’s Order, (ECF No. 35), granting a stay of discovery, to which Defendants filed a Response, (ECF No. 37). For the reasons stated below, the Court **GRANTS** Defendants’ Motion to Dismiss and **DISMISSES as moot** Plaintiff’s Objection/Appeal to the stay of discovery.

I. BACKGROUND

This case arises from Plaintiffs’ payment obligations for a loan to purchase real property (the “Mortgage”) located at 16 Via Ravello, Henderson, Nevada 89011 (the “Property”). (First Am. Compl. (“FAC”) ¶¶ 7–8, ECF No. 1-1). Plaintiffs received the Mortgage from Central Pacific Mortgage Company, who secured the Mortgage against the Property by recording a Deed of Trust. (*Id.* ¶ 9). Later, Countrywide Mortgage purchased the Mortgage, and then Bank of America (“BANA”) merged with Countrywide Mortgage. (*Id.* ¶ 10).

According to the First Amended Complaint, Plaintiffs last made a payment for the Mortgage on May 1, 2009, which BANA deemed late on June 1, 2009. (*Id.* ¶¶ 11–12). BANA

1 consequently recorded a Notice of Default and Election to Sell the Property on September 8,
2 2009 (“First Notice of Default”). (*Id.* ¶ 13). The First Notice of Default declared that it
3 accelerated the full, outstanding amount still owed for the Mortgage. (First Not. Default at 2,
4 Ex. B to Mot. Dismiss, ECF No. 10-2). However, on March 25, 2010, BANA recorded a
5 Notice of Rescission (“First Rescission”), which rescinded the First Notice of Default. (First
6 Rescission, Ex. C to Mot. Dismiss, ECF No. 10-3); (FAC ¶¶ 13–15).

7 In 2013, BANA substituted its role as servicer of Plaintiffs’ Mortgage with Nationstar.
8 (FAC ¶ 16). Because Plaintiffs were still delinquent on their Mortgage payments, Nationstar
9 recorded a Notice of Default and Election to Sell the Property on March 31, 2016 (“Second
10 Notice of Default”), which again accelerated the outstanding amount owed with the Mortgage.
11 (Sec. Not. Default, Ex. G to Mot. Dismiss, ECF No. 10-7); (FAC ¶ 17). Like BANA,
12 Nationstar rescinded the Second Notice of Default with a Notice of Rescission recorded twice:
13 on November 17, 2016, and January 9, 2017 (collectively, “Second Rescission”). (Sec.
14 Rescission at, Ex. H to Mot. Dismiss, ECF No. 10-8); (Sec. Rescission, Ex. I to Mot. Dismiss.,
15 ECF No. 10-9); (FAC ¶ 18). However, on January 9, 2017, Nationstar recorded another Notice
16 of Default and Election to Sell the Property (“Third Notice of Default”), and this Third Notice
17 of Default has not been rescinded. (Third Not. Default, Ex. J to Mot. Dismiss, ECF No. 10-10);
18 (FAC ¶ 19).

19 On October 3, 2019, Plaintiffs filed a Complaint against Defendants in the District Court
20 for Clark County, Nevada, asserting three causes of action: (1) quiet title; (2) declaratory
21 judgment; and (3) injunctive relief. (Compl. ¶¶ 25–42, ECF No. 1-1). Plaintiffs amended that
22 Complaint on October 9, 2019, though still asserting the same three causes of action as the
23 original. (First Am. Compl. (“FAC”), ECF No. 1-1).

24 Two days after filing the Amended Complaint, Plaintiffs filed an *Ex Parte* Motion for
25 Temporary Restraining Order and Preliminary Injunction with the Clark County Court to enjoin

1 a foreclosure sale on the Property scheduled for October 22, 2019—a sale based on foreclosure
2 proceedings initiated with Nationstar’s Third Notice of Default. (*Ex Parte* Mot. TRO, ECF No.
3 1-1). But three days after Plaintiffs filed their *Ex Parte* Motion, Defendants removed the case
4 to this Court and thereby negated the restraining order and injunction process in the Clark
5 County Court. (Pet. Removal, ECF No. 1).

6 On October 15, 2019, Plaintiffs re-filed their Motion for Temporary Restraining Order
7 and Preliminary Injunction with this Court, and the Court set an expedited briefing schedule.
8 (Min. Order, ECF No. 9). Defendants filed both an opposition to that Motion and a Motion to
9 dismiss the case. The Court ultimately denied Plaintiffs’ request for a temporary restraining
10 order, though Defendants’ Motion to Dismiss remained pending. (*See* Order, ECF No. 17).

11 **II. LEGAL STANDARD**

12 Federal Rule of Civil Procedure 12(b)(6) mandates that a court dismiss a cause of action
13 that fails to state a claim upon which relief can be granted. *See N. Star Int’l v. Ariz. Corp.*
14 *Comm’n*, 720 F.2d 578, 581 (9th Cir. 1983). When considering a motion to dismiss under Rule
15 12(b)(6) for failure to state a claim, dismissal is appropriate only when the complaint does not
16 give the defendant fair notice of a legally cognizable claim and the grounds on which it rests.
17 *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In considering whether the
18 complaint is sufficient to state a claim, the Court will take all material allegations as true and
19 construe them in the light most favorable to the plaintiff. *See NL Indus., Inc. v. Kaplan*, 792
20 F.2d 896, 898 (9th Cir. 1986).

21 The Court, however, is not required to accept as true allegations that are merely
22 conclusory, unwarranted deductions of fact, or unreasonable inferences. *See Sprewell v. Golden*
23 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). A formulaic recitation of a cause of action
24 with conclusory allegations is not sufficient; a plaintiff must plead facts showing that a
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1 violation is *plausible*, not just possible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing
2 *Twombly*, 550 U.S. at 555).

3 A court may also dismiss a complaint pursuant to Federal Rule of Civil Procedure 41(b)
4 for failure to comply with Federal Rule of Civil Procedure 8(a). *Hearns v. San Bernardino*
5 *Police Dept.*, 530 F.3d 1124, 1129 (9th Cir.2008). Rule 8(a)(2) requires that a plaintiff's
6 complaint contain "a short and plain statement of the claim showing that the pleader is entitled
7 to relief." Fed. R. Civ. P. 8(a)(2). "Prolonged, confusing complaints" should be dismissed because
8 "they impose unfair burdens on litigants and judges." *McHenry v. Renne*, 84 F.3d 1172, 1179
9 (9th Cir. 1996).

10 "Generally, a district court may not consider any material beyond the pleadings in ruling
11 on a Rule 12(b)(6) motion However, material which is properly submitted as part of the
12 complaint may be considered on a motion to dismiss." *Hal Roach Studios, Inc. v. Richard*
13 *Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990) (citations omitted). Similarly,
14 "documents whose contents are alleged in a complaint and whose authenticity no party
15 questions, but which are not physically attached to the pleading, may be considered in ruling on
16 a Rule 12(b)(6) motion to dismiss" without converting the motion to dismiss into a motion for
17 summary judgment. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994). Under Federal Rule
18 of Evidence 201, a court may take judicial notice of "matters of public record." *Mack v. S. Bay*
19 *Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986). Otherwise, if the district court considers
20 materials outside of the pleadings, the motion to dismiss becomes a motion for summary
21 judgment. *See Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir. 2001)¹.

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25 ¹ Plaintiffs' Amended Complaint references each of the recorded documents identified in the Background of this
Order. The Court accordingly can rely on these documents without converting Defendants' Motion to Dismiss
into one for summary judgment.

1 **III. DISCUSSION**

2 Plaintiffs' claims arise from Nevada Revised Statute ("NRS") 106.240, which creates a
3 "conclusive presumption that a lien on real property is extinguished" ten years after the debt
4 became "wholly due." Nev. Rev. Stat. § 106.240; *Pro-Max Corp. v. Feenstra*, 16 P.3d 1074,
5 1077 (Nev. 2001); (FAC ¶¶ 25–42). According to Plaintiffs, the Court can deem the Mortgage
6 on the Property satisfied and discharged under NRS 106.240 because more than ten years
7 passed since the recording of the First Notice of Default on September 8, 2009, which
8 accelerated the outstanding amount on the Mortgage and made it wholly due on that date. (*Id.*
9 ¶¶ 21–42).

10 Defendants move to dismiss Plaintiff's claims by arguing that NRS 106.240 does not
11 apply under the facts here and, thus, cannot support Plaintiffs' request for quiet title,
12 declaratory relief, or injunctive relief. That is, Defendants first argue NRS 106.240 cannot
13 prevent them from foreclosing on the Property through a non-judicial sale based on the
14 Mortgage, because NRS 106.240 is a statute of repose that applies only to judicial actions.
15 (Mot. Dismiss 5:21–6:11). Defendants next argue that the Mortgage's terms dictate when the
16 debt becomes "wholly due" for purposes of NRS 106.240, and acceleration pursuant to a
17 Notice of Default has no effect. (*Id.* 6:12–27). Consequently, according to Defendant, the
18 Mortgage has yet to become "wholly due" for purposes of NRS 106.240 because the
19 Mortgage's own terms state that the loan does not mature until June 1, 2034. (*Id.*). Defendants'
20 third argument is that even if Plaintiffs' Mortgage were accelerated by the September 8, 2009
21 Notice of Default to make the debt "wholly due" at that point, the recorded Notices of
22 Rescission withdrew the 2009 Notice of Default, thereby decelerating the debt and reinstating
23 the Mortgage's original 2034 maturity date. (*Id.* 7:2–28). And because deceleration occurred
24 less than ten years after acceleration, Defendants assert that the Mortgage had never been
25 "wholly due" for the requisite ten-year period for discharge under NRS 106.240. (*Id.*). Last,

Defendants contend that the ten-year period should be tolled by Plaintiffs' lawsuits preventing Nationstar and U.S. Bank from timely foreclosing. (*Id.* 8:2–9:2).

A. Discharge of the Mortgage

When addressing Plaintiffs' request for a temporary restraining order, the Court denied relief upon finding that Plaintiffs failed to show a likelihood of success on their claims. *See Valin v. Nationstar Mortg., LLC*, No. 2:19-cv-01785-GM-NDJA, 2019 WL 5697171, at *4 (D. Nev. Nov. 4, 2019). Crucial to the Court's finding were the recorded Rescissions' declarations retracting the First and Second Notices of Default on the Property, thereby decelerating the Mortgage and making the loan once again "wholly due" in 2034 as stated in the Mortgage's terms (rather than 2019 as argued by Plaintiffs). *Id.* Because neither the First nor Second Notices of Default remained in force for ten years or more before the Rescissions, the Court found discharge of the Mortgage under NRS 106.240 unlikely. *Id.*

Since the Court's Order denying Plaintiffs' request for a temporary restraining order, the Nevada Supreme Court has not issued a published decision resolving these issues surrounding NRS 106.240. But decisions from this District—as well as recent unpublished opinions by Nevada state appellate courts—reinforce the conclusion that Plaintiffs' Amended Complaint does not plausibly state claims for quiet title, declaratory relief, or injunctive relief based on a discharge of the Mortgage under NRS 106.240. *Glass v. Select Portfolio Servicing, Inc.*, No. 78325, 2020 WL 3604042, at *1 (Nev. July 1, 2020);² *cf. Johnston v. U.S. Bank Nat'l Ass'n as*

² The Nevada supreme court issued its decision in *Glass v. Select Portfolio Servicing, Inc.* after the parties completed briefing on Defendants' pending Motion to Dismiss. Defendants accordingly filed a Motion for Leave to File Supplemental Authority, (ECF No. 39), to notify the Court of the new, non-binding decision. Plaintiffs oppose the Court's reliance on *Glass* by noting that the appellant there intends to file a petition for rehearing or review *en banc*. So Plaintiffs ask that the Court not render a decision on Defendants' Motion until the Nevada supreme court determines rehearing. (Resp. 2:5–8, ECF No. 40). But the Court declines to further delay this case, and will grant Defendants' Motion for Leave. Plaintiffs do not outline what a rehearing petition would cover in *Glass*, and it is speculative that the Nevada supreme court would wholly reverse *Glass* if rehearing occurred to the point that the ultimate holdings in both this Court's prior Order and *Glass* would be undermined. Additionally, Plaintiffs did not file a motion to stay this case pending a decision on rehearing in *Glass*. The Court thus finds that delaying resolution of Defendants' ripe, fully briefed Motion is inappropriate.

1 *Tr. for TBW Mortg.-Backed Tr. Series 2006-5, TBW Mortg. Pass-Through Certificates, Series*
 2 *2006-5, No. 78278-COA, 2020 WL 3832873, at *2 (Nev. App. July 7, 2020). Indeed, in Glass*
 3 *v. Select Portfolio Servicing, Inc.*, the Nevada supreme court held that recording a rescission of
 4 a notice of default acts to retract the notice of default's acceleration of the underlying loan.
 5 *Glass, 2020 WL 3604042, at *1. Essential to the holding in that case was the recorded*
 6 *rescission's language stating that it "does hereby rescind, cancel and withdraw the Notice of*
 7 *Default and Election to Sell." Id. ("[B]y explicitly cancelling this Notice of Default, SPS*
 8 *effectively cancelled the acceleration.") The rescission accordingly "restored the parties to the*
 9 *prior status they held before the Notice of Default was filed." Id.*

10 Here, the language of the First Rescission contains the same declarations essential to
 11 retraction of acceleration in *Glass*:

12 "[Recontrust], acting as an agent for the Beneficiary does hereby rescind, cancel
 13 and withdraw the Notice of Default and Election to Sell . . . however, that this
 14 rescission shall not be construed as waiving, curing, extending to, or affecting any
 15 default, either past, present or future, under such Deed of Trust, or as impairing
 16 any right or remedy thereunder, and it is and shall be deemed to be, only an
 17 election without prejudice not to cause a sale to be made pursuant to such Notice
 18 of Default and Election to Sell, and it shall not in any way alter or change any of
 the rights remedies or privileges secured to Beneficiary and/or Trustee under such
 Deed of Trust, nor modify, nor alter in any respect any of the terms, covenants,
 conditions or obligations therein contained.

19 (First Rescission, Ex. C to Resp, ECF No. 11-3). Defendants later accelerated the Mortgage
 20 again through the Second Notice of Default, but the Second Rescission largely mirrors the First
 21 in terms of deceleration language, while adding more: "said Deed of Trust and all obligations
 22 secured thereby are hereby reinstated and shall be and remain in force and effect the same as if
 23 said Declaration of Default and Notice of Breach had not been made and given." (Second
 24 Rescission, Ex. H to Resp., ECF No. 11-8); (Second Rescission, Ex. I to Resp., ECF No. 11-9).
 25 The Rescissions thus withdrew acceleration of the Mortgage caused by the First and Second

1 Notices of Default. Granted, the Mortgage became re-accelerated when Defendants filed the
 2 Third Notice of Default on January 9, 2017. (Third Notice of Default, Ex. J to Resp., ECF No.
 3 11-10). But because the First and Second Rescissions were recorded within ten years of the
 4 First and Second Notices of Default, and because the Third Notice of Default was recorded
 5 within ten years of Plaintiffs' suit, NRS 106.240 does not apply to discharge the Mortgage here.
 6 *See Bank of Am., N.A. v. Estrella II Homeowners Ass'n*, No. 2:16-cv-02835-APG-DJA, 2020
 7 WL 4194004, at *3 (D. Nev. July 21, 2020) ("Because the trustee canceled the acceleration
 8 through the rescission of the notice of default, the deed of trust has not been extinguished by
 9 operation of § 106.240."). As a result, Plaintiffs' allegations do not plausibly state claims for
 10 relief under NRS 106.240, warranting dismissal. Furthermore, since the Court dismisses
 11 Plaintiffs' claims, the Court also dismisses as moot Plaintiff's Objection/Appeal to Magistrate
 12 Judge Albregts's Order staying discovery.

13 **B. Leave to Amend**

14 If the court grants a motion to dismiss, it must then decide whether to grant leave to
 15 amend. The Court will "freely give" leave to amend when there is no "undue delay, bad faith[,]
 16 dilatory motive on the part of the movant . . . undue prejudice to the opposing party by virtue of
 17 . . . the amendment, [or] futility of the amendment" Fed. R. Civ. P. 15(a); *Foman v. Davis*,
 18 371 U.S. 178, 182 (1962). Generally, leave to amend is only denied when it is clear that the
 19 deficiencies of the complaint cannot be cured by amendment. *See DeSoto v. Yellow Freight*
 20 *Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992).

21 The Court will not provide Plaintiffs leave to amend. The Amended Complaint's claims
 22 arise solely from allegations about the Mortgage's discharge under NRS 106.240 due to the
 23 First Notice of Default recorded on September 8, 2009. (FAC ¶¶ 25–42). As explained above,
 24 Plaintiffs' claims cannot succeed under those alleged facts. Because Plaintiffs do not seek
 25 leave to amend or explain what additional facts not currently alleged might render the claims

1 plausible, the Court has no basis to presume that additional factual allegations concerning the
2 recorded Rescissions or Notices of Default could cure the deficiencies with Plaintiffs' claims.

3 **IV. CONCLUSION**

4 **IT IS HEREBY ORDERED** that Defendants' Motion to Dismiss, (ECF No. 10), is
5 **GRANTED**. The Court **DISMISSES with prejudice** the claims in Plaintiffs' Amended
6 Complaint.

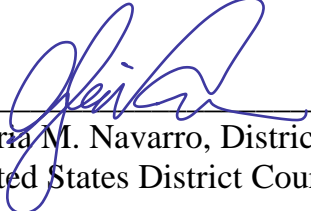
7 **IT IS FURTHER ORDERED** that Plaintiffs' Objection/Appeal, (ECF No. 36),
8 concerning Magistrate Judge Daniel J. Albregts's Order, (ECF No. 35), granting a stay of
9 discovery is **DISMISSED as moot**.

10 **IT IS FURTHER ORDERED** that Plaintiffs' Motion for Leave to File Reply in
11 Support of Objection/Appeal, (ECF No. 38), is **DISMISSED as moot**.

12 **IT IS FURTHER ORDERED** that Defendants' Motion for Leave to File Supplemental
13 Authority, (ECF No. 39), is **GRANTED**.

14 The Clerk of Court shall close the case and enter judgment accordingly.

15 **DATED** this 11 day of August, 2020.

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20 Gloria M. Navarro, District Judge
21 United States District Court
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